

## **§ 256.13**

### **§ 256.13 Are agencies required to supply a taxpayer identification number (TIN) when submitting a request for payment?**

Yes, agencies must include a valid TIN on all requests for payments, unless the situation meets one of the exceptions listed in the FMS TIN Policy, which may be found on the FMS Web site at: <http://www.fms.treas.gov/tinpolicy/regulations.html>. For an individual, the TIN is the Social Security Number. For a business, the TIN is the Employer Identification Number issued by IRS. The TIN provided must be for the party entitled to the payment, whether or not that party is the payee. Failure to include a required TIN results in an incomplete request for payment.

### **§ 256.14 What happens if I submit an incomplete request for payment?**

FMS may return, without action, any request for payment that is incomplete. If a request for payment is returned for lack of necessary information, the submitting agency may resubmit the request for payment once all the required information is available.

## **Subpart C—Debt Collection**

### **§ 256.20 How does an agency indicate that a debt is to be offset from a Judgment Fund payment?**

The submitting agency must identify on the appropriate Judgment Fund form any known debt owed to the United States that FMS is expected to collect by setoff against the award. Such a debt will be offset pursuant to the provisions of 31 U.S.C. 3728.

### **§ 256.21 Are Judgment Fund payments offset to collect administrative debts?**

Yes, separate and apart from its role as administrator of the Judgment Fund, FMS, in its capacity as disbursing official for the executive branch, offsets Judgment Fund payments to collect delinquent, nontax Federal debts through the Treasury Offset Program (TOP). This rule applies only to the setoff of Judgment Fund payments prior to payment certification, pursuant to 31 U.S.C. 3728, and not to disbursing official offsets

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pursuant to other authorities. (See 31 CFR 285.5 for requirements for disbursing official offset of past-due delinquent, nontax debts pursuant to the authority set forth in 31 U.S.C. 3716.)

### **§ 256.22 How does FMS set off an award under 31 U.S.C. 3728?**

The setoff statute establishes a two-step process to collect debts that are owed to the United States. If an agency notifies FMS of a debt for which a court has issued a judgment against a debtor in favor of the United States, or for which the IRS has issued a tax levy pursuant to 26 U.S.C. 6331, then FMS will automatically set off the debt from the payment. If the debt owed to the United States has not been judicially determined, then FMS must notify the claimant of the debt and request the debtor's consent to a setoff. If the debtor consents, then FMS will set off the debt. If the debtor does not consent, then FMS will withhold from payment an amount equal to the debt. FMS also may withhold an amount sufficient to pay the cost of litigating the debt to judgment. FMS then will consult with the underlying agency and the Department of Justice regarding the necessity for a civil action to reduce the debt to judgment. If litigation proceeds and is successful, FMS will set off the debt. If the suit is unsuccessful, FMS will pay the withheld amount with interest accruing from the date when payment would have been made.

## **Subpart D—Interest and Litigation Costs**

### **§ 256.30 When does the Judgment Fund pay interest?**

Interest is paid when it is ordered in the judgment pursuant to a statutory, contractual or constitutional waiver of sovereign immunity. Such waivers may include interest as set forth under 41 U.S.C. 611 (Contract Disputes Act), 5 U.S.C. 5596 (Back Pay Act), or Title VII, 42 U.S.C. 2000e–16 (Civil Rights Act of 1991). In addition, post-judgment interest is paid on awards eligible for interest under 31 U.S.C. 1304(b) (unsuccessful appeal by the Government).